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EXAMINER

LE, KHANH H

ART UNIT

PAPER NUMBER

3688

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/672,537	<b>Applicant(s)</b> KASIREDDY, VIJAY G.	
	<b>Examiner</b> KHANH H. LE	<b>Art Unit</b> 3688	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/13/2010 has been entered.

Claims 1-37 were and remain pending, with claims 1 (system), 13 (method), 25 (computer readable medium or CRM) and 37 (system) as independent claims. Only the independent claims are amended.

2. **(Interpretation of claim 37 (for prior art application):** Claim 37 is interpreted as being directed to the quote system).

### **Claim Rejections - 35 USC § 101**

3a. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**3b. Claims 25-36 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.**

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Claim 25: claims a computer-readable medium which could be interpreted as transitory propagating signals per se (see further explanation below) thus directed to non-statutory subject matter. Claims 24-36, dependents of claim 25, are rejected for the same reason.

A memo signed by USPTO Director Kappos in January, 2010, entitled “Subject Matter Eligibility of Computer Readable Media” provided guidance regarding “computer readable medium” / “machine readable medium” claims.

The document states, “the broadest reasonable interpretation of a claim drawn to a computer readable medium ... typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of a computer readable media, particularly when the specification is silent. See MPEP 2111.01.” The document further states that if a claim is drawn to a computer readable medium which covers both transitory and non-transitory embodiments, the claim may be amended (to cover only statutory embodiments) with the recitation “non-transitory.” Further, the document states that such an amendment will normally not trigger a new matter issue even if the specification is silent unless the specification “does not support a non-transitory embodiment because a signal per se is the only viable embodiment....”

Here the specification is silent on this issue and it does not appear the specification discloses that a signal per se is the only viable embodiment thus amending the claim as suggested above would overcome this rejection.

**3b. Claims 10-12 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.**

Claims 10-12 are system claims which as a whole encompass a human (“the consumer choosing” etc.. “the consumer visiting”, “the consumer makes”) thus the claims are directed to non-statutory subject matter. See MPEP 2105.

### **Nomenclature and interpretation**

4. For brevity, the following nomenclature (matching the claims language) is used:

DE : “Downstream supply chain entity”

UE: “Upstream supply chain entity”

SCD = “a supply channel delay between the DE and an UE”. Note: it is interpreted that by definition the SCD is a time that must elapse before a product in inventory of the UE can be made available to a consumer at the DE.

OLT: (customer) “order lead time”. This is when a customer agrees to take delivery of a product at a later time than a current time at a DE. Thus is interpreted that by definition the OLT represents a time difference between a future date of delivery to customer and the current date.

**Thus the OLT is by definition longer than SCD.**

For example if the regular supply channel supply lead time between a UE and a DE, i.e. the SCD is 10 days, then for the customer agreeing to take delivery 5 days from today at a retailer (a DE), then the OLT ((customer) “order lead time”), with respect to the time the product is still at the UE, is 15 days.

### **Claim Rejections - 35 USC § 112-2<sup>nd</sup> paragraph**

5a. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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**5b. Claims 1-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claims 1, 13:** the scope of this method claim is not clear because of the statement "to allow the consumer to receive... in exchange for the incentive".

It is not clear if a step of actually sending the product from current inventory of the upstream supply chain entity is claimed. If Applicant intends to claim such a step, the step must be explicitly claimed. Since the limitation is prone to different interpretations, the claim is indefinite. (One interpretation is that the limitation "to allow.." is only a statement of purpose, and the step is only to communicate the order, without the sending from the upstream supply chain entity taking place. This is the interpretation taken for prior art application purposes and thus "to allow.." limitation is not given patentable weight as merely a statement of purpose.)

For claim 1, it is not clear if Applicant means to claim that the system is configured to actually send the product from current inventory of the upstream supply entity in response to the order received at the upstream supply chain entity. If so, the structure that allows the consumer to receive from current inventory of the upstream supply entity must be explicitly identified and claimed. (Note that the drawings must show all claimed structural elements as well).

Similarly "the incentive reflects cost savings ...to the DE ... associated with the OLT" is the name of the 2nd incentive, does not affect the structure or step of "**determine on incentive based on an OLT for the product** " thus the imitation is not given patentable weight.

The limitation is also indefinite because it is not clear whether the applicant intends the incentive to be determined based on the cost savings to the DE. If so, explicitly so claiming would overcome this rejection basis, and the limitation will be given weight.

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**Claims 2-12, 14-24, dependents of claims 1, 13, respectively, are rejected based on their dependency.**

**Independent claims 25 (CRM) and 37 (system):** rejected for the same reason as claims 13 and 1 above. **Claims 26-36, dependents of claim 25 are rejected based on the dependency.**

**5c. Claims 3, 15, 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 3:** the scope of the claim is unclear because it seems some connecting essential elements are missing. How is the profit increase determined from the cost “at the upstream supply chain entity” (interpreted , under *broadest reasonable interpretation (“BRI”)*, as costs of the UE, i.e. incurred by the UE) and the cost savings to the downstream supply chain entity?

No discussion is provided how **the profit increase at the DE** can be determined from **the cost at the upstream supply chain entity** and the cost savings to the downstream supply chain entity. The most relevant specification are at paragraphs [0040];[0041]; [0042] ; [0053], however there is no clear discussion or examples given how exactly **the profit increase at the DE can be determined from the costs of the UE and the cost savings at the DE.**

[0040], [0041] do not discuss how costs at the UE (interpreted as costs by the UE) affect profit increase at the DE even though some cost savings realized by the DE are discussed as affecting profit increase at the DE. **[0042] discloses: “As a result, OEM 14 may avoid one or more carrying costs**

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associated with those materials” but does not disclose the DE’s profit increase is partly based thereon. 0053] discloses: **“Quote system 38a may then allocate a first portion of the cost savings to**

**retailer 18 as increased profit margin”** however does not specify that the cost savings are at the UE, nor are the costs at the UE disclosed as being used to get the increased profit , as claimed.

**Further the claim is indefinite as overbroad because encompassing any number of possible combinations of costs at the UE and savings at the DE.** Profit margin at the DE is clearly based on the cost savings at the DE but what about the costs at the UE? what types of costs at the UE are involved? Those of the UE only? Those incurred by the DE or others as a result of activities of the UE? Decreasing costs only? If increasing costs, how is the DE’s profit margin calculated? The amount of direction provided by the inventor is sorely lacking. Except for the original claims 3, 7, 15, 19 which claim this combination without further details, the specification at the most relevant specification paragraphs [0040];[0041]; [0042] ; [0053] do not explain how the invention can be practiced. Further since there are various ways this profit increase can be calculated based on the two claimed parameters, the scope, and metes and bounds of the limitation are not clear.

**Also claim 3 line 3:** to “collaborate” is unclear. What is the scope of collaborating? sending an email? providing a computer? or does the first quote system actually calculate ( “determine”) the cost at the UE? what does each of the quote system actually do to “determine”?

**Claims 15, 27 paralleling claim 3 are likewise rejected.**



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**5d. Claims 4, 16, 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 4 line 2:** same issue as claim 3 with “collaborate”.

**Claim 4 also is indefinite because** “based on one or more business rules” “associated with one or more of the DE or UE” allows for an infinite number of combinations of rules.

**Claims 16, 28 paralleling claim 4 are likewise rejected.**

**5e. Claims 5, 17, 29 and 6-9, 18-21, 30-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 5: as with the independent claims,** the scope of this system claim is not clear because of the statement “to allow the consumer to receive... in exchange for the second *incentive...*”.

It is not clear if Applicant means to claim that the system is configured to actually send the product from current inventory of the upstream supply entity in response to the order received at the 2<sup>nd</sup> upstream supply chain entity. If so, the structure that allows the consumer to receive from current inventory of the 2nd upstream supply entity must be explicitly identified and claimed. (Note that the drawings must show all claimed structural elements as well).

Similarly “the second incentive reflecting collective cost savings to the DE and the first UE associated with the second OLT” is the name of the 2nd incentive, does not affect the structure or step of “**determine a second incentive based on a second OLT for the product.**” thus the imitation is not given patentable weight.

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The limitation is also indefinite because it is not clear whether the applicant intends the incentive to be determined based on the collective cost savings to the DE and 1<sup>st</sup> UE . If so, explicitly so claiming would overcome this rejection basis, and the limitation will be given weight.

**Claims 17, 29 paralleling claim 5 are likewise rejected.**

**Claims 6-9, 18-21, 30-33, dependents of claims 5, 17, 29 respectively are rejected based on the dependency.**

**5f. Claims 6, 18, 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 6:**

*“the interface is further operable to: ...convey the second incentive... to allow the consumer to choose whether to receive the product at the second FUTURE DATE rather than the current date in exchange for the second incentive”* is not clear. **It is not clear if the interface is operable to actually allow the consumer to choose (e.g. via buttons on the interface)** or the interface is only operable to convey the incentive offers to the consumer . If Applicant intend to claim the 1st meaning, such should be made clear. Here, it interpreted the interface is only operable to convey the incentive offers to the consumer. That is **“to allow the consumer to choose whether to receive the product at the second FUTURE DATE rather than the current date in exchange for the second PI”** is not given patentable weight as merely a statement of purpose.

Claims 18 (“conveying... to choose...”), 30 (“to convey... to choose...”) have similar terms and issues.

**5g. Claims 7, 19, 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 7:** the scope of the claim is unclear because of missing essential elements. How is the profit increase determined from the cost at the 2<sup>nd</sup> upstream supply chain entity and the cost savings to the downstream supply chain entity?

As to profit increase, Claim 7 limitations are similar in nature to those of claim 3 and thus the same indefiniteness issues arise. See discussion of claim 3 above.

Also, since there are various ways this profit increase can be calculated based on the two claimed parameters, the scope of the limitation is unclear. The cost savings based on the order lead time alone can be calculated in many ways thus the claim is further indefinite.

**Also claim 7 line 3:** as discussed above, again to “collaborate” is unclear. What is the scope of collaborating? sending an email? or does the first quote system actually calculate ( “determine”) the cost at the 2<sup>nd</sup> UE?

**Claims 19, 31 paralleling claim 7 are likewise rejected.**

**5h. Claims 8, 20, 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

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**Claim 8 line 2:** same issue as claim 3 with “collaborate”.

As with claim 4, claim 8 also is indefinite because “based on one or more business rules” “associated with one or more of the DE and 1<sup>st</sup> and 2<sup>nd</sup> UE” allows for an infinite number of combinations of rules.

**Claims 20, 32 paralleling claim 8 are likewise rejected.**

**5h. Claims 9, 21, 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 9:** as with the independent claims, the scope of this system claim is not clear because of the statement “to allow the consumer to receive... in exchange for the third incentive...”. It is not clear if Applicant means to claim that the system is configured to actually send the product from current inventory of the upstream supply entity in response to the order received at the 3<sup>rd</sup> upstream supply chain entity. If so, the structure that allows the consumer to receive from current inventory of the 3<sup>rd</sup> upstream supply entity must be explicitly identified and claimed. (Note that the drawings must show all claimed structural elements as well).

Also “the third incentive being larger than the 1<sup>st</sup> and 2<sup>nd</sup> incentive” is not clear: do Applicants intend a structure to so calculate or set the 3<sup>rd</sup> incentive to be so larger? If so such a structure is not claimed. Again note that all such structures need be shown on the drawings.

**Claims 21, 33 paralleling claim 9 are likewise rejected for the same reasons. Note that for method claim 21 the step of setting or calculating “the third incentive being larger than the 1<sup>st</sup> and 2<sup>nd</sup> incentive” needs to be specifically claimed.**

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As for prior art application, “the third incentive being larger than the 1st and 2nd incentive” is not given patentable weight since it is not part of the step-in claim 21 of communicating the order, does not impact that step; nor affects the structure in claim 9 or the CRM in claim 33 configure to communicate the order. “to allow..” is not given patentable weight being only a statement of purpose.

**5i. Claims 10-12, 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Claims 10 and 12:** the scope of the claim is indefinite since claiming a human ( the consumer) in system claims. It is not clear if the human is intended to be part of the computer system.

**Also Claims 10 and 12:** are indefinite since mixing statutory classes. “the consumer choosing, purchasing , visiting, etc.. and ”makes”, the entity “delivering”, “delivering” are steps in system claims. See MPEP 2173.05(p)II.

**Claims 34-36:** are indefinite since improperly mixing statutory classes. “the consumer choosing, purchasing , visiting, etc.. and ”makes”, the entity “delivering”, “delivering” are steps in system claims. See MPEP 2173.05(p)II.

### **Claim Rejections - 35 USC § 112**

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:  
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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**6b. Claims 3, 7, 15, 19, 27, 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.**

**6c. Claims 3, 15, 27 and 7, 19, 31:**

**Claim 3:** No discussion is provided how **the profit increase at the DE** can be determined from **the cost at the upstream supply chain entity** and the cost savings to the downstream supply chain entity. The most relevant specification are at paragraphs [0040];[0041]; [0042] ; [0053], however there is no clear discussion or examples given how exactly **the profit increase at the DE can be determined from the costs at the UE** (interpreted , under BRI, as costs by the UE) **and the cost savings at the DE.**

[0040], [0041] do not discuss how costs at the UE (i.e. by the UE) affect profit increase at the DE even though some cost savings realized by the DE are discussed as affecting profit increase at the DE. **[0042] discloses: “As a result, OEM 14 may avoid one or more carrying costs** associated with those materials” but does not disclose the DE’s profit increase is partly based thereon.[ 0053] discloses: **“Quote system 38a may then allocate a first portion of the cost savings to retailer 18 as increased profit margin” however does not specify that the cost savings are at the UE, nor are the costs at the UE (i.e. by the UE) disclosed as being used to get the increased profit for the DE, as claimed.**

Also, the claims here are overbroad because encompassing any number of possible combinations of costs of the UE and savings at the DE. Profit margin at the DE is clearly based on the cost savings at the DE but what about the costs at the UE? what types of costs at the UE are involved? “ associated with supplying the product from current inventory (of the UE)” is still undefined. Are these costs incurred by the UE only? Those incurred by the DE or others as a result of activities of the UE? Decreasing costs only? The amount of direction provided by the inventor is sorely lacking. Except for the original claims 3, 7, 15, 19 which claim this

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combination without further details, the specification at the most relevant specification paragraphs [0040];[0041]; [0042] ; [0053] do not explain how the invention can be practiced. Since there are various ways this profit increase can be calculated based on the two claimed parameters, without proper guidance, the methods needed to practice the invention are not known. It would take undue experimentation to make or use the invention based on the content of the disclosure.

**Claims 15, 27 paralleling claim 3 are likewise rejected.**

**Claims 7, 19, 31 have similar limitations and are likewise rejected.**

### **Claim Rejections - 35 USC § 103**

7a. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**7b. Claims 1- 11, 13-23, 25-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco US 7257552 in view of Official Notice (with e.g. Norris et al, US 5510780 or Masuda US 5569897 as support thereof).**

**A priori, as discussed in the section re. the second paragraph of 35 U.S.C. 112 above, many limitations do not carry patentable weight. Thus the prior art does not have to disclose them. To advance prosecution, the Examiner has provided prior art that disclose some of those limitations, however, note that this is not required to make a prima facie case.**

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**Claims 1, 13, 25, 37 and 2, 14, 26:**

Franco discloses consumer products distribution system, customer interface to place orders, customer specifying delivery schedule for “predictive purchasing “, collaboration system along supply chain to reduce costs to all involved including consumers ( e.g. abstract, Fig 1, 28A and associated text; excerpts below). Consumers are given incentive discounts to promote the use of Predictive Purchasing, which significantly improves supply chain productivity (e.g. abstract, Fig 28A and associated text; excerpts below; especially col. 52 lines 26-67).

Franco further discloses at least the following system and software:

Description Paragraph - DETX (119):

Each Inventory Provider 130 can communicate with the following: (1) The VIMS 200 to fill consumer orders from its Inventory Site 112 or to obtain consumption statistics and forecasts, Virtual Inventory status, and real-time data on consumer orders. (2) The OIMS 111 of a Retailer 110 to negotiate product supplies, optimize product distribution, minimize total inventory, and reduce distribution cost and time. (3) Each Inventory Site 112 to which it supplies products for the matters related to product deliveries. (4) The PTSS 300 for deliveries or pickups, and time updates for pending deliveries or pickups.

**Relevant excerpts follow:**

Abstract :

A real-time transaction processing Consumer Products Distribution System (PDMS) reduces distribution costs, facilitates the distribution of products to consumers and makes online shopping practical. The PDMS integrates **Collaborative Inventory Sharing**, Order Aggregation, Consumer Predictive Purchasing, Product Transport Support Service, Display Shops, Uniform Consumer Preference Codes, Integrated Virtual Technical Support Centers, and other convenient features. **Consumers purchase products through web sites of local and remotely located retailers preferably using Predictive Purchasing**. The items purchased from multiple retailers are aggregated at a consumer selected Order Aggregation Site (OAS) based upon a consumer specified schedule. The consumer can pick up the aggregated orders at the selected OAS or have the



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aggregated orders delivered to a residence. Commercial carriers process consumer parcels at OASs where they are combined with Aggregated Orders for pickup or delivery. **Consumers are given incentive discounts to promote the use of Predictive Purchasing, which significantly improves supply chain productivity.**

(col.1 lines 13-20) :

This invention relates generally to a method and system for improving the efficiency and reducing the cost of distributing and selling products to consumers. **More particularly, the invention relates to Internet based methods and systems for Just-In-Time product distribution, inventory sharing, order aggregation, consumer predictive purchasing, and other conveniences and benefits that provide incentives for consumers to shop online.**

(col. 3 lines 6-24 )

One aspect of the invention relates to Consumer Predictive Purchasing. In the current product distribution space, vast amounts of extremely valuable predictive consumption data stored in the minds of individual consumers are lost every day to the detriment of the supply chain and the economy. This aspect provides a system and method to collect and store, in real-time, predictive consumer consumption data. The use of this data in supply chain planning and forecasting can significantly contribute to major cost reductions in product manufacturing and distribution. In one embodiment of this invention, **consumers are offered incentive discounts to use the infrastructure provided by the PDMS for predicting their consumption needs at a future date and placing Predictive Purchase orders scheduled for future delivery to fulfill the predicted needs. The incentive discounts can be determined by appropriate algorithms designed to ensure extensive consumer participation. This aspect is discussed in Sections, II.A.7 and VIII of the Detailed Description of the Invention.**

(col.6 lines 1-10)

One specific object of this invention is to provide a system and method for coordinating the operation of the Collaborative Inventory Sharing aspect. This system and method gives each participating merchant the opportunity **to minimize inventory and costs** while offering a broader selection of products and better service to consumers. This system and method also **offers retailers the opportunity to broaden their customer base, negotiate better terms and prices for their product acquisitions, balance and reduce inventories, and eliminate unnecessary product transportation costs.**

(col. 6 lines 20-23 )

Another specific object of this invention is to provide a system and method **for coordinating Consumer Predictive Purchasing. This system relies upon**

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**incentive discounts to encourage consumers to use Predictive Purchase Orders.**

(col.7 lines 6-18)

**All participants in the distribution chain, such as manufacturers, wholesalers, distributors, retailers, and consumers can derive benefits from this invention. Manufacturers can obtain accurate real-time data upon which to base production plans. Using a Just-In-Time business model, wholesalers, distributors, and retailers can operate efficiently, with reduced inventories, product costs, shipping costs, and shipping times. Retailers can ensure that no sales are lost due to lack of inventory and can better serve their customers with broader product selections. At the end of the distribution chain, consumers can shop comfortably from home, buy products at more competitive prices, receive their purchases more quickly, and have little or no need to drive for shopping.**

(col. 15 lines 32-51)

**Consumer Predictive Purchasing**

The VIMS 200 preferably manages and coordinates the operation of specialized application programs that support Consumer Predictive Purchasing. One of these programs helps consumers predict and plan their household consumption. Another computes incentive price discounts. **Using the infrastructure provided by the PDMS 100, consumers can obtain significant price discounts on Predictive Purchase orders scheduled for delivery at some future time determined by the consumer's prediction.** The consumer ordering data can be collected and processed by the PDMS 100 **in real-time to generate consumption reports that are available to the affected participants in the product distribution path,** from the manufacturers that produce the products to the retailers that receive the purchase orders. **This information gives the manufacturers the opportunity to generate accurate production forecasts and manufacturing schedules and provides the necessary infrastructure for the entire product distribution chain to approach a Just-In-Time operating model.**

Description Paragraph - DETX (92): (col.16 lines34-56):

Architecture scalability:

In a preferred embodiment of this invention, the architecture of the VIMS 200 is scalable through a component-based API which allows programmatic access to low level data structures and functions. This feature allows flexible customization of the VIMS 200 to meet specific business requirements through the use of specialized application programs. Examples of such specialized application programs are:

(1) A program that coordinates the use of an OAS 400

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for shipping and receiving parcels as a convenience to consumers.

(2) A program that optimizes the use of the trucks associated with the PTSS 300 by optimizing schedules and itineraries subject to system constraints.

(3) **A program that computes minimum acceptable inventory levels for the most efficient operation of Inventory Sites.**

(4) **A program that helps consumers predict and plan household consumption to enable them to take advantage of the incentive discounts associated with Consumer Predictive Purchasing.**

(5) A program that manages and coordinates the operation of Integrated Virtual Technical Support Centers.

(col. 52 lines 12-25)

In one embodiment, the VIMS 200 provides web based programs that operate with consumer specific historical consumption data stored in the Consumer DBM 239, to help consumers predict their future consumption needs. Using such programs, the Consumer 120 can obtain reasonable estimates of future household consumption and then use these estimates to place Predictive Purchase orders to fulfill consumption needs at some future time. **To promote the use of Predictive Purchase orders, Retailers 110 can offer special incentive discounts to consumers that place Predictive Purchase orders scheduled for delivery at some future time to fulfill the predicted needs. These special incentive discounts provide a powerful vehicle for collecting predictive consumption data from consumers.**

(col. 52 lines 26-39)

To support Predictive Purchasing, the VIMS can provide specialized application programs that **estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD).** As used herein, **Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.** The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers to **enable retailers to tailor incentive discounts to the markets they serve and the business models they use. In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.**

(col. 52 lines 40-67)

The use of Predictive Purchasing can bring major economic benefits to the entire supply chain, some of which can be passed to consumers in terms of incentive price discounts. For purposes of illustration, assume that based upon historical consumption records maintained by the VIMS 200 on the behalf of

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a specific consumer, **Predictive Purchase orders for milk can be placed by that consumer with a PPD of 10 days. When the consumer places a Predictive Purchase order, preferably the ordering information becomes available in real-time to all the participants in the supply chain, from the dairy that processes the milk to the retailer that receives the order.** Once a significant percentage of consumers adopt Predictive Purchasing, the dairy can accurately plan and schedule production and significantly improve productivity. **Likewise, the distribution system can operate efficiently with Just-In-Time scheduling.** Milk containers can be shipped from the dairy to regional distribution centers and within a few hours be transported by the PTSS 300 to each designated OAS 400 Just-In-Time to meet Order Aggregation schedules. **Accordingly, the dairy-to-consumer distribution time and the total inventory of milk in the distribution pipeline can both be reduced to a minimum. In addition, the costs otherwise experienced by Retailers 110 for keeping milk in inventory in expensive shelf space, and other costs associated with handling, spoilage, and overhead can be eliminated.** In general, similar productivity improvements for both perishable and non-perishable products can be achieved at most stages of the supply chain.

(col. 52 lines 26-39)

To support Predictive Purchasing, the VIMS can provide specialized application programs that **estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD).** As used herein, **Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.** The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers to **enable retailers to tailor incentive discounts to the markets they serve and the business models they use.** In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.

(col. 53 lines 1-4)

FIG. 28A illustrates a method 2800 by which specialized application programs can estimate supply chain cost savings, correlate them with the PPD, and **derive appropriate incentive price discounts for Predictive Purchases.**

(col. 53 lines 16-26)

**At step 2803, the correlation between PPD and incentive price discounts offered to consumers is identified.** This correlation can be established empirically by a set of statistical experiments using a range of PPD values and a range of incentive price discounts. **A separate experiment is conducted for each PPD value whereby each experiment involves offering various incentive**

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**price discounts and recording the number of Predictive Purchase Orders placed by consumers that take advantage of each price discount.** From this data the correlation between PPD and incentive price discounts can be statistically evaluated.

(col. 53 lines 27-37)

At step 2804, the correlations identified in steps 2802 and 2803 are analyzed to establish the incentive price discounts that generate the desired cost reductions. Various types of criteria can be used to perform this analysis. For example, a criterion can be maximizing profitability after accounting for price discounts. **At step 2805, the incentive price discounts associated with the respective PPDs are applied.** At step 2806, data representing online orders for the product is collected and stored over time. **This data extends to the full range of PPD values and their respective incentive price discounts and includes the case where the PPD is zero.**

(col. 53 lines 38-48)

At step 2807, the data collected over time is periodically analyzed to establish revised incentive price discounts. **At step 2808, the revised incentive price discounts associated with the respective PPD values are applied to the product.** After step 2808, the process loops back to step 2807 and remains in an infinite loop, which over time periodically revises the incentive price discounts to obtain optimum performance in accordance to a specified criterion. For example, the long-term average price paid by consumers for the specific product is maintained at a minimum to control inflation.

**Thus Franco discloses, at the citations and excerpts above, all of claims 1, 13, 25, 37 and 2, 14, 26:**

A computer-implemented system for distributing consumer demand upstream in a supply chain, comprising:

one or more computer systems (see Fig 1, computer systems are e.g. item 111: "OIMS" or item 200: "VIMS" ) comprising:

a) a user interface (e.g. Fig 1 item 120: consumer shopping online; Fig 20 item 120, consumer browser) configured operable to:

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a1) receive a consumer demand for a product to be received at a FUTURE DATE

(see e.g. col. 52 lines 26-39 and excerpts above);

b) a quote system (e.g. Fig 1 item 113: storefront; or Fig 20 item 113: web storefront;

e.g. Fig 28A, item 2803: “price offered” reads on quote and consumer acceptance or rejection ) coupled configured to:

b1) receive, from the user interface, the consumer demand for the product;

b2) determine an incentive based on an OLT for the product, the OLT for the product representing a time difference between the FUTURE DATE and the current date, the OLT being longer than a supply channel delay between a DE and an UE, **the incentive reflecting cost savings to the DE associated with the OLT** (see e.g. col. 52 lines 26-39 and excerpts above; see FIG. 28A which illustrates a preferred method by the PDMS to correlate price discount to Predictive Purchase Delay (PDD); the PDD reads on the claimed OLT); and

b2) communicate the incentive (a price discount on the product) to the user interface (see e.g. col. 52 lines 12-25, and 26-39 and excerpts above),

wherein the user interface is further configured operable to:

a2) receive the incentive from the quote system (see above); and

a3) communicate the incentive to a consumer (see col. 52 lines 12-25 and excerpts above);

and

c) a consumer order management system (COMS) (e.g. Figure 1, item 111:”OIMS” or item 200:”VIMS” which includes “order generation module, order processing module, see col. 8 lines 5-9) configured to:

c1) communicate an order for the product to the UE (e.g. see Figs 6A-7B: order generation module) (to allow the consumer to receive the product at the FUTURE DATE from

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current inventory of the UE rather than from current inventory of the DE in exchange for the incentive) (see excerpts above: Just in time delivery model disclosed at excerpts above reads on receipt from current inventory of the UE since in Franco all lead delivery times as minimized).

**(NOTE: though disclosed by Franco, the “to allow..” and “the cost savings...comprising...” limitations, (if any not deleted) are also interpreted as statements of purpose or effect (or natural consequence of the previous steps) only, thus do not need to be given patentable weight. This applies to all claims below having similar limitations).**

**As to the new limitation of “determining, by the computer, an initial payment and one or more interim payments due prior to the consumer receiving the product; communicating, by the computer, the incentive and payments to the consumer” Franco does not disclose such.**

**However, Official Notice is taken that interim payments are old and well-known: e.g. in sales by merchants of big ticket items such as household major appliances or cars, see e.g. Norris et al, US 5510780 that also discloses such sales are beneficial to both merchants and consumers (C1 l. 17-30). See e.g. Masuda US 5569897 disclosing installment payments are allowed by retailers and promotes sales.**

**Because it is obvious to follow customary practices, thus it would have been obvious to a PHOSITA to add these customary and well-known practices of installment payments to promote sales, for the benefit of merchants and consumers alike (see e.g. Norris, Masuda, supra). In case of an installment payment it would have been obvious that the customer must be apprised of the payment plan and thus it would have been obvious that a skilled artisan would have known to modify the Franco system to include such computing by a computer.**

**With installment payments, Official Notice is taken that there usually is an initial payment followed by a number installment payments. Thus it would further be obvious**

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**there would be an initial payment followed by a number installment payments in the Franco system modified as above discussed, and thus it would have been obvious to notify the consumer of such payments so she can pay as scheduled.**

**Response to Arguments presented 01/29/10 that seem to be repeated in the last Response of 08/13/2010 since Applicant persists that there is no articulation of a prima facie case.**

Pointing to Franco, col. 52 lines 26-39, (excerpted above), Applicant argues, (Resp. at 22-24), that Franco only discloses that the length of the "Predictive Purchase Delay" (which is equivalent to the claimed order lead time) is directly proportional to the amount of achievable supply chain cost savings and incentive price discounts, which is a passive correlation, unlike determining an incentive based on an order lead time for the product, which is required by claim 1 language.

The examiner notes that Franco discloses more than mere data correlation.

Franco, at (col. 52 lines 26-67) discloses:

To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased. The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers **to enable retailers to tailor incentive discounts to the markets they serve and the business models they use.** In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.

Contrary to argument, the paragraph above suggests first, that incentives are offered: *"incentive price discounts offered to consumers"*. See also abstract.



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Second, .."[ T]he specialized application programs also correlate the PPD to the incentive *price discounts offered... to **enable retailers to tailor incentive discounts*** to the markets they *serve and the business models they use.*" means that incentive discounts are actively determined, and the correlation between PPD and (i.e. past ) discounts offered is used in an iterative or optimizing mode to "tailor" (i.e. adjust, determine, or redetermine) what the discounts will be.

Third,"the longer the PPD is, the larger the achievable supply chain cost savings and the *incentive price discounts are*", clearly suggests that the incentive discount is based on the PPD.

See also Fig 28 A and (col. 53 lines 1-4):

FIG. 28A illustrates a method 2800 by which specialized application programs can estimate supply chain cost savings, correlate them with the PPD, and **derive appropriate incentive price discounts for Predictive Purchases.**

This bolded language would clearly suggest to a skilled artisan that the discounts are based on the cost savings that are a function of the PPD.

(col. 52 lines 12-25)

**".... To promote the use of Predictive Purchase orders, Retailers 110 can offer special incentive discounts to consumers that place Predictive Purchase orders scheduled for delivery at *some future time to fulfill the predicted needs. ...*"**

Again the bolded language would clearly suggests to a skilled artisan that the discounts are based on the delayed delivery, i.e. the PPD.

See also (col. 53 lines 16-26): for a given PPD, several experimental discounts are calculated, offered, monitored, then revised, reapplied:

**At step 2803, the correlation between PPD and incentive price discounts**

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**offered to consumers is identified.** This correlation can be established empirically by a set of statistical experiments using a range of PPD values and a range of incentive price discounts. **A separate experiment is conducted for each PPD value whereby each experiment involves offering various incentive price discounts and recording the number of Predictive Purchase Orders placed by consumers that take advantage of each price discount.** From this data the correlation between PPD and incentive price discounts can be statistically evaluated.

**See also** (col. 53 lines 27-37) excerpted above:

.... **At step 2805, the incentive price discounts associated with the respective PPDs are applied.** At step 2806, data representing online orders for the product is collected and stored over time. **This data extends to the full range of PPD values and their respective incentive price discounts and includes the case where the PPD is zero.**

**See also** (col. 53 lines 38-48) excerpted above:

*“At step 2807, the data collected over time is periodically analyzed to establish revised incentive price discounts. At step 2808, the revised incentive price discounts associated with the respective PPD values are applied to the product. After step 2808, the process loops back to step 2807 and remains in an infinite loop, which over time periodically revises the incentive price discounts to obtain optimum performance in accordance to a specified criterion. ...”*

**Thus it is clear from the excerpts above that the incentive applied is positively determined as a function of the PPD.**

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Further, it is noted that the claim is to “determine an incentive based on an order lead time for the product, wherein the order lead time for the product represents a time difference between the future date and the current date, the order lead time being longer than a supply channel delay between a downstream supply chain entity and an upstream supply chain entity, **the incentive reflecting cost savings to the downstream supply chain entity associated with the order lead time.**”

Thus the positive step is “to determine an incentive based on an order lead time for the product” . “Wherein .. the incentive reflecting cost savings to the downstream supply chain entity associated with the order lead *time*. ” is just a statement of effect, to which little patentable weight should be given.

Further even if it is given full patentable weight, Franco discloses “ In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts *are.*” (*col. 52 lines 26-39*) thus establishing a direct relationship between the 3 quantities.

Franco also discloses a supply chain cost savings (which includes savings for “*another* component associated with the distribution process” which is interpreted as a downstream supply chain entity”) is also function of the PPD.

see e.g. (*col. 53 lines 5-15*).

*“At step 2801, a product is identified. At step 2802, the correlation between PPD and achievable supply chain cost savings is identified. **The supply chain cost savings may include a component associated with the manufacturing process and another component associated with the distribution process. For each increment of the PPD the corresponding supply chain cost savings can be estimated** through computer modeling programs and the respective results recorded. Using these results, the correlation in step 2802 can be expressed, for example, **as a plot of supply chain cost savings versus PPD.**”*

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Since the discount is a function of the PPD and the cost savings to a downstream supplier is also a function of the PPD, it is clear that the incentive is also a function of the cost savings to a downstream supplier, i.e. “the *incentive “reflects” cost savings to the downstream supply chain entity associated with the order lead time.*” as claimed.

**Appellant had argued** that Franco at col. 52 lines 26-39 does not disclose determining an incentive based on an OLT wherein the OLT is longer than a supply channel delay between a DE and an UE. That is, Franco’s PPD is not an OLT that is longer than a supply channel delay between a DE and an UE.

**However see explanation and definition in the nomenclature part above. The OLT is by definition longer than SCD which by definition is a supply channel delay between a DE and an UE.**

Thus Franco’s PPD is an OLT that is longer than a supply channel delay between a DE and an UE and an incentive is based thereon.

Also Franco as discussed above teaches determining an incentive based on an OLT, thus whatever the value of the OLT is, the Franco’s system would be capable of determining the incentive based thereon.

Franco, at (col. 52 lines 26-67) discloses:

To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased. The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers **to enable retailers to tailor incentive discounts to the markets they serve and the business models they use.** In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.

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**Thus if economic considerations make it desirable for merchants to promote discounts** based on an OLT being longer than a supply channel delay between a certain DE and a certain UE, **it would have been obvious** to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to do so, " to enable retailers to tailor incentive discounts to the markets they serve and the business models they use" as taught by Franco.)

**Claims 3, 15, 27:**

**These claims are so indefinite as to almost warrant No Prior Art application based on** In re Steele, 305 F.2d 859,134 USPQ 292 (CCPA 1962) (it is improper to rely on speculative assumptions regarding the meaning of a claim and then base a rejection under 35 U.S.C. 103 on these assumptions). See MPEP 2143.03.

However as best can be understood, it is interpreted "*the cost at the UE associated with supplying the product from the current inventory of the UE*" is the cost savings accrued to the DE (e.g. no storage or shipping costs) from not having to carry inventory since shipping is done from the UE.

Thus

"determine a profit increase on the product at the DE based on:  
the cost at the UE associated with supplying the product from the current inventory of the UE;  
and the cost savings to the DE associated with the OLT ;  
and determine the incentive based on the ***profit increase***".

is interpreted as:

determining a profit increase from cost savings to the DE associated with shipping from the current inventory of the UE (i.e. the DE saving storage and receiving from UE costs);  
and determine the incentive based on the ***profit increase***".

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FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses

wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the UE to determine a cost at the UE associated with the consumer receiving the product from the current inventory of the UE (e.g. at col.6 lines 1-10: *“each participating merchant the opportunity to minimize inventory and costs while offering a broader selection of products and better service to consumers. This system and method also offers retailers the opportunity to .. negotiate better terms and prices for their product acquisitions, balance and reduce inventories, and eliminate unnecessary product transportation costs.”* suggests multi-parties quotes and negotiation systems (“collaborate”) to reduce costs for the benefit of customers).

Further Franco ( at e.g. col. 52 lines 26-67) discloses savings are obtained at each step along the supply chain and are passed onto consumers as discounts thus reads on:

determining a profit increase from cost savings to the DE associated with shipping from the current inventory of the UE (i.e. the DE saving storage and receiving from UE costs) ( *“each participating merchant the opportunity to minimize inventory and costs; .. eliminate unnecessary product transportation costs.”*);  
and determine the incentive based on the **profit increase**”.

Alternatively, it would have been obvious, from the teachings of Franco to modify the prices and savings sharing as claimed to arrive at the claimed limitations.

**Claims 4, 16, 28 (dependent on claims 1, 13, 25):**

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**These claims are so indefinite as to almost warrant No Prior Art application based on** In re Steele, 305 F.2d 859,134 USPQ 292 (CCPA 1962) (it is improper to rely on speculative assumptions regarding the meaning of a claim and then base a rejection under 35 U.S.C. 103 on these assumptions). See MPEP 2143.03.

However , to advance prosecution, as best can be understood, it is interpreted FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses wherein the quote system is a first quote system and operable to collaborate with a second quote system associated with the UE to determine the incentive based on one or more business rules associated with one or more of the DE's and UE's (business rules are implied in Franco's citations or excerpts above in order to carryout the cost savings sharing as taught in Franco, ).

**Claims 5, 17, 29 (dependent on claims 1, 13, 25):**

**Interpretation of Claims 5, 17, 29:**

**As stated above,** claim 5 lines 10-11: *"the second incentive reflecting collective cost savings ... associated with the 2<sup>nd</sup> order lead time"* is just a definition of the incentive,( i.e. merely a name of the incentive); it does not affect the step of determining the incentive (which is claimed as being based only on the second order lead time, not on the collective cost savings), thus the limitation ( which is a mere name of the incentive) is not given patentable weight.

claim 5 lines 17-20: "to allow the consumer to receive... in exchange for the second incentive..." is a statement of purpose and is not given patentable weight.

claim 5 line 20: " the second incentive being larger than the first incentive" is again a definition or name of the second incentive, does not affect the structure or step of "communicate" an order by the COMS, thus is not given patentable weight. In claim 5 it is definitely non- functional descriptive material .

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Note that all the other limitations e.g. “(the second OLT for the product representing a time difference between a second FUTURE DATE and the current date, the second OLT being longer than a second supply channel delay between the DE and a second UE) “ are just definitions , do not impact the method or system.

**Same interpretation for claims 17, 29.**

Thus the claims boil down to:

determining (by a **“quote system”**) a second incentive based on a second order lead time (longer than the regular supply channel delay time between the DE and a 2<sup>nd</sup> UE), communicating the 2<sup>nd</sup> incentive to the consumer, **and the COMS communicating the customer order to the 2<sup>nd</sup> UE (implicitly upon consumer agreement to receive at a second order lead time).**

Franco, discloses at (col. 52 lines 26-67):

To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased. **The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers to enable retailers to tailor incentive discounts to the markets they serve** and the business models they use. In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.



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This means that Franco discloses many options of PPD's and corresponding price discounts can be offered to consumers : longer PPD's (a Franco's PPD is an OLT; longer PPD's implies at least on 1<sup>st</sup> or 2nd OLT's so the comparison "larger" can be made, with e.g. 2<sup>nd</sup> OLT being longer than 1<sup>st</sup> OLT ) achieve larger price discounts (i.e. 1<sup>st</sup> or 2<sup>nd</sup> incentives, 2<sup>nd</sup> incentive being larger than 1st incentive) . Thus Franco discloses a system component (e.g. "quote system" further operable to: determine a second incentive based on a second OLT for the product ( the longer the PPD, the greater the discount is determined to be). Franco also teaches longer PPD's get larger supply chain cost savings. Thus Franco teaches passing along the cost savings of the longer PPD's to the consumer in the form of larger incentives. Thus Franco discloses Claims **5, 17, 29** which at best can be interpreted as giving a larger incentive to consumers, for accepting a longer delivery delay time, based on better achieved savings.

Franco also implicitly discloses the steps and structures ( which can be called COMS) etc..as claimed ) to communicate such offers to consumers and to take in their order based on the chosen longer PPD, in order to implement the method taught. .

Thus Franco as discussed above and at citations above, discloses Claims **5, 17, 29:**  
**i.e.**

The system, method and software of claims 1, 13, 25  
 the quote system is further operable to:  
 determine a second incentive based on a second OLT for the product,  
 and communicate the second incentive to the interface;  
 the interface is further operable to: receive the second incentive from the quote system;  
 and convey the second incentive  
 and the COMS is further operable to,  
 ( if the consumer chooses to receive the product at the second FUTURE DATE rather than the current date in exchange for the second incentive),  
 communicate an order for the product to the second UE.

**Claims 6, 18, 30:**

As discussed above with respect to claim indefiniteness, “**to allow the consumer to choose** whether to receive the product at the second FUTURE DATE rather than the current date in exchange for the second PI” is not given patentable weight as merely a statement of purpose. It interpreted the interface is only operable to convey the incentive offer to the consumer.

FRANCO modified as above discussed discloses the system, method and software of claims 5, 17, 28 and further implicitly discloses:  
wherein the interface is operable to convey the first and second incentives to allow the consumer to choose whether to receive the product at the first FUTURE DATE or the second FUTURE DATE (rather than the current date) in exchange for the first incentive or the second incentive (at e.g. col. 52 lines 26-67: “ *the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are. “ implies giving choices of a several FUTURE DATE ’s for different incentives*). It would have been obvious in Franco to convey such incentives and choices to consumers to effect the Franco system of discounts based on longer PPD's. It would also have been obvious to provide consumers with the means to indicate their choices , again to carry out the Franco system of discounts based on longer PPD's.

**Claims 7, 19, 31:**

Claims 7, 19, 31 parallel claims 3, 15, 27 as to the second UE.

As discussed above, Franco at col. 52 lines 26-67: “ the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are” and other citations about sharing savings realized through the supply chain, read on claims 7, 19, 31:

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Thus FRANCO modified as above discussed discloses the system, method and software of claims 5, 17, 28 and further discloses:

wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the second UE to

determine a cost at the second UE associated with the consumer receiving the product from the current inventory of the second UE;

determine a profit increase on the product at the DE based on:

the cost at the second UE associated with supplying the product from the current inventory of the second UE ;

and the cost savings to the DE associated with the second OLT ;

and determine the second INCENTIVE based on the profit increase.

**See claim 3 for similar analysis and interpretation of determining a profit increase and determining the second INCENTIVE based on the profit increase.**

In Franco, it would have been obvious to repeat the same cost savings sharing with multiple others along the supply chain and include a 2nd UE. Mere duplication of parts has no patentable significance unless a new and unexpected result is produced. MPEP 2144.04 VI(B). Here repetition of the same structure and steps as applied to a 2nd UE would just repeat the same predictable results thus would have been obvious.

**Note: All other limitations interpretations, if any, applied to claim 3 and its parallel claims also apply here.**

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**Claims 8, 20, 32:**

Claims 8, 20, 32 parallels claims 4, 16, 28 as to the second UE.

As discussed above Franco at col. 52 lines 26-67: “ the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are” and other citations about sharing savings realized through the supply chain, reads on claims 8, 20, 32.

Thus FRANCO modified as above discussed discloses the system, method and software of claims 5, 17, 28 and further discloses:

wherein the quote system is a first quote system and operable to collaborate with one or both of a second quote system associated with the first UE and with a third quote system associated with the second UE to determine the second INCENTIVE based on one or more business rules associated with one or more of the downstream and first and second upstream supply chain entities.

Again, mere duplication of parts has no patentable significance unless a new and unexpected result is produced. MPEP 2144.04 VI(B). Here repetition of the same structure and steps as applied to a 2nd UE would just repeat the same predictable results thus would have been obvious.

**Note: All the limitations interpretation applied to claim 4 and its parallel claims also apply here.**

**Claims 9, 21, 33:**

As with claims 5, 17, 28 above, Franco, in the citations above, reads on repeating the same method of claim 1 further up the chain supply chain, involving more UE's and reflecting more savings with more UE's to be passed on to customers, which reads on claims 9, 21, 33.

Thus FRANCO discloses the system, method and software of claims 5, 17, 28 and further

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discloses

wherein: the quote system is further operable to:

determine a third incentive based on a third OLT for the product,

(the third OLT for the product representing a time difference between a third FUTURE DATE and the current date, the third OLT being longer than a third supply channel delay between the DE and a third UE),

the third incentive reflecting collective cost savings to the DE and the second UE associated with the third OLT;

and communicate the third incentive to the interface; the interface is further operable to: receive the third incentive from the quote system; and convey the third incentive to allow the consumer to choose whether to receive the product at the third FUTURE DATE rather than the current date in exchange for the third incentive ;

and the COMS is further operable to, if the consumer chooses to receive the product at the third FUTURE DATE rather than the current date in exchange for the third incentive, communicate an order for the product to the third UE

(to allow the consumer to receive the product at the third FUTURE DATE from current inventory of the third UE rather than from current inventory of the DE in exchange for the third incentive) ,

the collective cost savings to the DE and the second UE associated with the third OLT and reflected in the third incentive comprising collective cost savings associated with the consumer receiving the product at the third FUTURE DATE from current inventory of the third UE rather than from current inventory of the downstream supply chain entity, the first UE , or the second UE ,

the third incentive being larger than the first incentive and the second incentive.

**Note: All the limitations interpretation applied to claims 5 and its parallel claims also apply here.**

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**Claims 10, 22, 34:**

FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses wherein the consumer choosing to receive the product at the future date rather than the current date in exchange for the incentive comprises one of: the consumer purchasing the product at the current date; the consumer committing at the current date to purchase the product at the FUTURE DATE ; and the consumer indicating an intention at the current date to purchase the product at the FUTURE DATE (citations above).

**\*\* Note for Claims 34-36 :** as stated above note also that all the claimed steps are not given patentable weight as not affecting the product (the CRM and software) or being outside the scope of the CRM ).

**Claims 11, 23, 35:**

FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses:

wherein the consumer receiving the product at the FUTURE DATE comprises one of: the consumer visiting the DE at the FUTURE DATE to pick up the product; the DE delivering the product to the consumer at the FUTURE DATE and the UE delivering the product to the consumer at the FUTURE DATE (e.g. abstract).

**7. Claims 12, 24, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco in view of Official Notice (with e.g. Norris or Masuda as support thereof) as applied to claims 1, 13, 25 above, and further in view of Official Notice (with Dabney US 7653591 or Walker US 5794207 A as support thereof).**

**Claims 12, 24, 36:**

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FRANCO discloses the system, method and software of claims 1, 13, 25 and discloses extensively about product returns and authorization of such but does not disclose explicitly wherein, if the consumer chooses to receive the product at the FUTURE DATE rather than the current date in exchange for the incentive, the consumer makes an initial payment to the retailer at the current date based on one or more costs to the DE associated with cancellation of the order.

However, Official Notice is taken that it is well known for vendors to charge fees or penalties or liquidated damages to protect vendors from breach of contract by buyers, e.g. in the case of cancellation of orders. Usually a deposit or initial payment would be such liquidated damages. An example is loss of deposit in cancellation of buying a house or cancellation of a custom product e.g. a car.

**Another example: credit card “late fees” are such liquidated damages, for breach of paying the agreed upon minimum on a credit card balance by a certain time, called a “grace period”. See Dabney US 7653591 (c2 l. 58-62).** Dabney also discloses that liquidated damages, to be enforceable under most state laws, usually have to have some rational relation to loss or damage sustained by a contractor in case of breach (c 3 l. 11-14). However in some cases, such amount can also be arbitrary, unrelated to losses incurred, and all depending on agreement between the contracting and bargaining parties, such as in credit card cases (c3 l. 15 et seq.).

**Because it is obvious to follow customary practices, thus** it would have been obvious to a PHOSITA to add such customary practice of liquidated damages to the system of Franco to protect vendors.

**The responses to arguments below are hereby made an integral part of this rejection.**

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### **Response to Arguments**

8. Applicant's arguments filed 08/13/2010 have been fully considered but they are not persuasive.

**Applicant repeats some of the same arguments that were** filed 01/29/2010. To the extent they are similar,(especially as to the no articulation or insufficient articulation arguments), Applicants are referred to Office Action mailed 05/13/2010, pages 22-24, which are herein incorporated by reference. (Also see Office Action dated 10/29/09, pages 16-18) .

The new limitations are addressed above. Note that Dabney US 7653591 is cited as another support for an Official Notice.

The level of skill in the art is evidenced by the cited references, e.g. Franco, and as such, the level of skill is high.

Upon further consideration, the instant claims are found to be indefinite to the extent that were prior art not applied, per In Re Steele, supra, such would have been justified. To advance prosecution, however, Franco is still applied and in combination with other prior art, still deemed properly disclosing the invention.

The new limitations are discussed above in the prior art discussion.

### **Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday



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9:00-6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Weiss can be reached at (571)272-6782. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/

Primary Examiner, Art Unit 3688